

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
WASHINGTON, D.C. 20230

In the Matter of:	)	
	)	Docket No.
ROBERT J. GAUDU	)	97-BXA-16
6700 Woodbrooke Road	)	
Victor, New York 14564,	)	
	)	
Respondent	)	

ORDER

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), having initiated an administrative proceeding against Robert J. Gaudu (Gaudu) pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (the Act), and the Export Administration Regulations (15 C.F.R. Parts 730-774 (1998)) (the Regulations),<sup>1</sup> based on allegations that Gaudu violated the provisions of Sections 787.3(b), 787.4(a) 787.4(b), and 787.5(a) of the former Regulations, as follows:

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<sup>1</sup> The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), and August 13, 1998 (63 Fed. Reg. 44121, August 17, 1998), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).

<sup>2</sup> The alleged violations occurred in 1992. The Regulations governing the violations at issue are found in the 1992 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1992)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

1. beginning on or about November 11, 1992 and continuing through on or about December 8, 1992, Gaudu conspired with Paul Dufault, Ed Jentz, General Parts International, Inc. and others to evade U.S. export control laws that restricted exports to Libya by acquiring U.S.-origin computer systems, representing that the equipment was for use in Iran, but intending to export it to Libya without the export authorization that the conspirators knew or had reason to know was required by Section 772.1(b) of the former Regulations, in violation of Section 787.3(b) of the former Regulations;
2. in furtherance of the conspiracy described above, Gaudu and his fellow conspirators, while in possession of U.S.-origin computer equipment, were specifically told by other parties to the intended transaction that the equipment would be exported to Libya and not to Iran, but nevertheless planned to proceed with the export transaction without obtaining the authorization they knew was required, in violation of Sections 787.4(a) and 787.4(b) of the former Regulations; and
3. in furtherance of the conspiracy described above, Gaudu, on or about December 8, 1992, made false or misleading representations directly or indirectly to BXA and U.S. Customs Service officials in the course of an investigation instituted under the authority of the

Act, in violation of Section 787.5(a) of the former Regulations; and

BXA and Gaudu having entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$25,000 is assessed against Gaudu, which shall be paid within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 & Supp. 1998)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Gaudu will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that for a period of three years from the date of entry of this Order, Gaudu shall be denied all privileges of participating, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the

Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
- C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

FOURTH, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the

denied person acquires or attempts to acquire such ownership, possession or control;

- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

FIFTH, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of

responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.


SIXTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

SEVENTH, that as authorized by Section 766.18(c) of the Regulations, this denial of export privileges shall be suspended for a period of three years from the date of entry of this Order, and shall thereafter be waived, provided that, during the period of suspension, Gaudu has committed no violation of the Act, or any regulation, order, or license issued thereunder.

EIGHTH, that a copy of this Order shall be delivered to the United States Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022, notifying that office that the case is withdrawn from adjudication as provided by Section 766.18(b) of the Regulations.

NINTH, that the Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

  
F. Amanda DeBusk  
Assistant Secretary  
for Export Enforcement

Entered this 16<sup>th</sup> day of September, 1998.



E602-7

**UNITED STATES DEPARTMENT OF COMMERCE**  
**Bureau of Export Administration**  
Washington, D.C. 20230

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert J. Gaudu  
6700 Woodbrooke Road  
Victor, New York 14564

DEC - 8 1997

Dear Mr. Gaudu:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described below, you have violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)) (the Regulations),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (the Act).<sup>2</sup>

Facts constituting violations:

**Charge 1**

Beginning on or about November 11, 1992 and continuing through on or about December 8, 1992, Robert Gaudu conspired with Paul Dufault, Ed Jentz, General Parts International, Inc. (General Parts) and others to bring about acts that constituted violations of the former Regulations. The purpose of the conspiracy was for Gaudu, Dufault, Jentz, General Parts and others to evade U.S. export control laws that restricted exports to Libya. To accomplish their purpose, the conspirators acquired U.S.-origin computer systems, representing that the equipment was for use in Iran, a destination to which the equipment could be exported

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<sup>1</sup>The alleged violations occurred in 1992. The Regulations governing the violations at issue are found in the 1992 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1992)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations, codified at 15 C.F.R. Parts 730-774 (1997), establish the procedures that apply to the matters set forth in this charging letter.

<sup>2</sup>The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices on August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).



without an individual validated export license. In fact, the conspirators intended to export the equipment to Libya without the export authorization that the conspirators knew or had reason to know was required by Section 772.1(b) of the former Regulations. BXA alleges that, by conspiring or acting in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the Act, or any regulation, order or license issued thereunder, Gaudu violated Section 787.3(b) of the former Regulations.

#### Charges 2-3

In furtherance of the conspiracy described in Charge 1 above, Gaudu acquired U.S.-origin computer equipment with the intent to export the equipment to Libya. While he was in possession of this equipment, Gaudu and his fellow conspirators were specifically told by other parties to the intended transaction that the equipment would be exported to Libya and not to Iran. The conspirators were fully cognizant of their export control responsibilities under the former Regulations. Nevertheless, Gaudu and his co-conspirators planned to proceed with the export transaction without obtaining the license required to export the equipment to Libya. BXA alleges that, by possessing U.S.-origin commodities with the intent to export them in violation of the former Regulations, and knowing or having reason to know that a violation of the Act or the former Regulations was intended to occur, Gaudu violated Sections 787.4(a) and 787.4(b) of the former Regulations.

#### Charge 4

In furtherance of the conspiracy described in Charge 1 above, Gaudu, on or about December 8, 1992, in the course of an investigation instituted under the authority of the Act, made false or misleading representations directly to BXA and U.S. Customs Service officials. Gaudu represented to government officials that certain computer equipment was intended for export to the Iranian National Oil Company in Iran. In fact, as Gaudu knew, the U.S.-origin computer equipment was intended for ultimate destination in Libya. BXA alleges that, by making or causing the making of false or misleading statements of material fact directly or indirectly to a United States government agency, in the course of an investigation instituted under the authority of the Act, Gaudu violated Section 787.5(a)(1) of the former Regulations.

BXA alleges that you committed one violation of Section 787.3(b), one violation of Section 787.4(a), one violation of Section 787.4(b), and one violation of Section 787.5(a)(1), for a total of four violations of the former Regulations.

Accordingly, you are hereby notified that an administrative proceeding is instituted against you pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of



obtaining an Order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$10,000 per violation (see Section 764.3(a)(1) of the Regulations);

Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice before BXA (see Section 764.3(a)(3) of the Regulations).

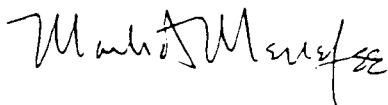
Copies of relevant Parts of the Regulations are enclosed.

If you fail to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7.

You are further notified that you are entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with your answer. You are also entitled to be represented by counsel, and to seek a settlement of the charges.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter. Accordingly, your answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5(a) of the Regulations. In addition, a copy of your answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Lorie B. Whitaker, Esq." below the address. Ms. Whitaker may be contacted by telephone at (202) 482-5311.

Sincerely,



Mark D. Menefee  
Acting Director  
Office of Export Enforcement

Enclosures

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
WASHINGTON, D.C. 20230

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ROBERT J. GAUDU	)	97-BXA-16
6700 Woodbrooke Road	)	
Victor, New York 14564,	)	
	)	
<u>Respondent</u>	)	

SETTLEMENT AGREEMENT

This Agreement is made by and between Robert J. Gaudu (Gaudu) and the Bureau of Export Administration, United States Department of Commerce (BXA), pursuant to Section 766.18(b) of the Export Administration Regulations (15 C.F.R. Parts 730-774 (1998)) (the Regulations),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (the Act).

Whereas, on December 8, 1997, BXA initiated an administrative proceeding against Gaudu pursuant to the Act and the Regulations by issuing a Charging Letter alleging that Gaudu

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<sup>1</sup> The alleged violations occurred in 1992. The Regulations governing the violations at issue are found in the 1992 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1992)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

<sup>2</sup> The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), and August 13, 1998 (63 Fed. Reg. 44121, August 17, 1998), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).

violated the provisions of Sections 787.3(b), 787.4(a), 787.4(b) and 787.5(a) of the former Regulations as follows:

1. beginning on or about November 11, 1992 and continuing through on or about December 8, 1992, Gaudu conspired with Paul Dufault, Ed Jentz, General Parts International, Inc. and others to evade U.S. export control laws that restricted export to Libya by acquiring U.S.-origin computer systems, representing that the equipment was for use in Iran, but intending to export it to Libya without the export authorization that the conspirators knew or had reason to know was required by Section 772.1(b) of the former Regulations, in violation of Section 787.3(b) of the former Regulations;

2. in furtherance of the conspiracy described above, Gaudu and his fellow conspirators, while in possession of U.S.-origin computer equipment, were specifically told by other parties to the intended transaction that the equipment would be exported to Libya and not to Iran, but nevertheless planned to proceed with the export transaction without obtaining the authorization they knew was required, in violation of Sections 787.4(a) and 787.4(b) of the former Regulations; and

3. in furtherance of the conspiracy described above, Gaudu, on or about December 8, 1992, made false or misleading representations directly or indirectly to BXA and U.S. Customs Service officials in the course of an investigation instituted under the authority of the Act, in violation of Section 787.5(a) of the former Regulations;

Whereas, Gaudu received notice of issuance of the Charging Letter pursuant to Section 766.3(b) of the Regulations;

Whereas, Gaudu has reviewed the Charging Letter and is aware of the allegations made against him and the administrative sanctions that could be imposed against him if the allegations are found to be true; he fully understands the terms of this Settlement Agreement and the proposed Order; he enters into this Settlement Agreement voluntarily and with full knowledge of his rights, and he states that no promises or representations have been made to him other than the agreements and considerations herein expressed;

Whereas, Gaudu neither admits nor denies the allegations contained in the Charging Letter;

Whereas, Gaudu wishes to settle and dispose of all matters alleged in the Charging Letter by entering into this Settlement Agreement; and

Whereas, Gaudu agrees to be bound by an appropriate Order giving effect to the terms of this Settlement Agreement, when entered (appropriate Order);

Now Therefore, Gaudu and BXA agree as follows:

1. BXA has jurisdiction over Gaudu, under the Act and the Regulations, in connection with the matters alleged in the Charging Letter.

2. BXA and Gaudu agree that the following sanctions shall be imposed against Gaudu in complete settlement of the alleged violations of the Act and the former Regulations set forth in the Charging Letter:

- a. Gaudu shall be assessed a civil penalty in the amount of \$25,000, which shall be paid within 30 days from the date of entry of the appropriate Order.

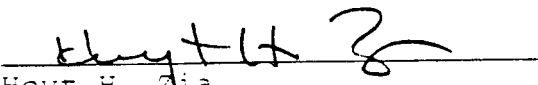
- b. Gaudu may not, for a period of three years from the date of entry of an appropriate Order, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:
- i. applying for, obtaining, or using any license, License Exception, or export control document;
  - ii. carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
  - iii. benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.
- c. As authorized by Section 766.18(c) of the Regulations, this denial of export privileges shall be suspended for three years from the date of entry of the appropriate Order, and shall thereafter be waived, provided that,

Agreement is not accepted and an appropriate Order is not issued by the Assistant Secretary for Export Enforcement pursuant to Section 766.13(b) of the Regulations, BXA and Gaudu agree that they may not use this Settlement Agreement in any administrative or judicial proceeding and that neither party shall be bound by the terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the appropriate Order, when entered, nor shall this Settlement Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Settlement Agreement shall become binding on BXA only when the Assistant Secretary for Export Enforcement approves it by entering an appropriate Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

BUREAU OF EXPORT ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE

  
Hoyt H. Zia  
Chief Counsel  
for Export Administration

Date: 8/28/98

ROBERT J. GAUDU

  
Robert J. Gaudu

Date: 8-27-98